

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

**ANDREW JOSTEN LOVINGOOD,**

Plaintiff,

v.

**No. 3:19-cv-00009**

**BILL JOHNSON, DERRICK GRAVES;**

Defendants.

**MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 1**

This case was filed February 5, 2019. This is the second time the same has been pending in federal district court. It was previously filed and non-suited. In the interim, Mr. Lovingood attempted to seek criminal liability against this Defendant and this Defendant was acquitted.

With respect to the instant Motion, only Count I of the Complaint asserts any theory against this Defendant. Nowhere does Count I in the Complaint or any other pleading include a “failure to intervene” claim against this Defendant. No disclosures were made by Plaintiff concerning this claim. No discovery has been taken with regard to this claim. In fact, this Motion is only being filed as the undersigned remembered the submission of a jury instruction by counsel for the Plaintiff on the “failure to intervene” theory against this Defendant. Such is insufficient. Not only has Plaintiff not plead this claim, this Defendant has not acquiesced to this claim in any other pleading or order. Accordingly, it is respectfully submitted that Defendant’s Motion in Limine be granted and this theory be precluded from being submitted to or argued to the jury at trial.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of November, 2021.

s/ Arthur F. Knight, III  
Arthur F. Knight, III, BPR #016178  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/Arthur F. Knight, III  
Arthur F. Knight, III